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**Supreme Court of the United States**

**OCTOBER TERM, 1945**

AUG 18 1945  
CHARLES ELMORE DUFFLEY

**No. 198**

**M. KRAUS & BROS., INC.,**

*Petitioner,*

*against*

**UNITED STATES OF AMERICA,**

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

**REPLY BRIEF FOR PETITIONER**

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*Of Counsel.*

August 13, 1945

**Supreme Court of the United States**

**OCTOBER TERM, 1945**

**M. KRAUS & BROS., INC.,**

*Petitioner,*

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The gist of the Government's main argument is that "it is obvious" that "a dealer who must purchase a secondary product for which he himself has no demand, in order to get a scarce product he desires, is, in fact, paying more than ceiling prices for the scarce commodity, whether or not the secondary commodity can be sold by some other person supplying a different type of trade, and, however fair the price." (Bf., p. 6).

The Government would therefore apply a purely subjective test to the transaction, looked at from the point of view of the particular purchaser,—and apply it exclusively, whereas the test of the statute by virtue of its plain wording (unlawful to "sell or deliver" above an established ceiling price) and well-understood anti-inflationary intent, is plainly objective. The sole question is has the price-fixed article been in fact sold at a price in excess of the ceiling? Acceptance of the Government's argument would mean that

of two combination sales, with the primary and secondary articles respectively sold at the ceiling price and at the same fair price, a transaction with one person might be legal and with another illegal, depending upon the value to the particular purchaser of the secondary commodity.

The Government would, moreover, apply such a purely subjective test, from the point of view of the purchaser, in the face of the plain fact that sales of such useful secondary commodities as poultry parts at fair prices are indisputably anti-inflationary. This for the reason that increased sales of the less-wanted but nevertheless edible parts of poultry plainly increase the amount of food in the market relative to the supply of money and credit, and thus tend to lower the price of the poultry.

The statute is not concerned with the extent to which particular buyers can utilize what they buy or in inhibiting high-pressure salesmanship employed to dispose of less-wanted poultry parts. It seeks to combat inflation by prohibiting sales in excess of ceiling prices, not purchases deemed to be disadvantageous in respect of particular items by particular buyers. The test, we submit, is purely objective. That the trial court's rulings were based on the contrary premise is too plain for argument, as indeed is implicitly admitted by the Government.

### Conclusion

For the reasons stated, it is respectfully submitted that the petition for writ of certiorari be granted.

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August 13, 1945.